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When death is not a crime: challenges for police and policing.

(5,460 words)

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Abstract

The over-representation of vulnerable populations within the criminal justice system, and the role of police in perpetuating this, has long been a topic of discussion in criminology. What is less discussed is the way in which non-criminal investigations by police, in areas like a death investigation, may perpetuate similar types of engagement with vulnerable populations. In Australia, as elsewhere, it is police who are responsible for investigating both suspicious and violent deaths like homicide as well as non-suspicious, violent deaths like accidents and suicides. Police are also the agents tasked with investigating deaths which are neither violent nor suspicious but occur outside hospitals and other care facilities. This paper reports on how police describe – or are described by others – during their role in a non-suspicious death investigation, and the challenges that such investigations raise for police and policing.

Keywords: police, death, coroners, investigations

When death is not a crime: challenges for police and policing

1. Introduction.

The Coronial systems of Australia, like those elsewhere with their origins in English history, require investigation into a death where: the identity of the deceased is unknown; the death is violent or otherwise unnatural; the death is suspicious; the death is an unexpected outcome of a health procedure; a cause of death certificate has not been issued; or the death occurred in care or custody (State Coroners Guidelines, 2013, Qld). The vast majority of these deaths are neither suspicious nor violent. Of the 28 563 deaths registered in Queensland in 2011-2012, only 4461 deaths (15.62%) were reported to the Coroner. Of those reported, 40.3% were reported only because the cause of death was uncertain or unknown (these were natural, non-suspicious deaths), compared to 31.57% reported as violent or unnatural (accidental deaths and suicides) and 22.98% reported as health care related. The remaining deaths were reported due to occurring in care or custody (2.85%) or as a suspected homicide (2.3%) (State Coroner Annual Report 2012). Unlike media representations of predominantly American style death investigations, the vast majority of deaths investigated by the state are non-suspicious natural deaths rather than suspected homicides. Similarly, and again unlike media representations of death investigations, Australian coroners rarely visit the scene of a death to gather information. Rather, it is police who are charged with the task of attending every death scene and it is police who are required to not only determine the suspicion or not of the death, but also to gather any relevant information, which may range from witness statements to suicide notes. They are also required to attend to a grieving and often traumatised family, as well as to engage with a dead body which may be disrupted or decaying.

Research also supports the fact that vulnerable populations are over-represented in coronial death investigations in Australia (predominantly the elderly, Indigenous people and those from low socio-economic status), some of whom are also over-represented in the criminal justice system (most notably those from low socio-economic backgrounds and Indigenous communities) (Carpenter and Tait 2009). An implication of this is that families may bring pre-existing relationships with the criminal justice system and its personnel, to a non-criminal death investigation when, for example, the family is already known to the local police. In Australia, this tends to include Indigenous and other South Sea and Pacific Islanders. Families may also bring ‘innuendos of suspicion’ if they are perceived by police as belonging to a culture, ethnicity or religion that is situated as threatening to ‘our way of life’ or ‘our national security’. In Australia, post 9/11, this tends to target the Muslim population. In such situations as these, there can be the general impression by both the bereaved family and the wider community ‘that it is wrongdoing rather than tragedy that is being investigated’ (Clarke and McCreanor 2006, 33). Moreover, this occurs in light of the recognition that police have a role in the continued over-representation of vulnerable populations within the criminal justice system, and that this role may be just as relevant in the coronial system, but much less discussed.

In this paper, these three issues – the infrequent and random dealings police have with non-criminal death investigations, the contact police must have with families suffering the trauma and grief of a sudden death, and the over-representation of vulnerable populations – come together in this exploration of the ways in which police are able to move between their criminal and non-criminal duties.

2. Method.

This discussion is situated within a larger funded research project which sought to explore the specific ways in which Coronial personnel (Coroners, pathologists, counsellors, nurses and police) engaged with families during a death investigation, particularly those that presented as culturally or religiously different based on practices around death, dying and the disposal of bodies. This initially included Indigenous Australians, and Islamic and Jewish populations, but was extended to other South Sea and Pacific Islanders during the course of the research. Based on the purposive sampling of the most experienced personnel in one Australian jurisdiction, 30 coronial professionals were interviewed (9 full time coroners, 7 forensic pathologists, 3 coronial nurses, 5 police officers, 2 community police liaison officers and 4 coronial counsellors). Semi-structured interviews over a nine month period in 2012, focused on a series of relevant issues which included: understanding of the role of families in a death investigation; impediments to a family's involvement; the appropriateness of familial involvement in coronial decision making; and views on their colleagues' interactions with families.

Interviews were conducted at their place of work, and took between 1 and 2 hours each to complete. All interviews were conducted by one researcher for consistency of approach, and transcribed by a professional service before being sent back to each interviewee for confirmation. For the purposes of this paper, interviews were coded to identify all discussion of police by coronial professionals other than police and were then analysed around three key themes: grief, families and emotions; death, evidence and investigation; and religion, culture and autopsy. The police interviews were open coded across the same three themes. Three issues emerged from the analysis of the coronial personnel: the

overarching criminal lens through which police approach a death investigation; the considerable emotional work required by police when investigating a death; and the ways in which both over and under policing is evident when specific cultural and religious groups are the subject of an investigation.

3. Police Culture

Police culture has been examined extensively. It is argued to offer insight into the ways in which police 'become' police and how they learn what it means to be a police officer. This includes not only official policies, practices, training and procedures to be found in operating manuals, legislation, and codes of conduct, but also unofficial or 'on the job' socialisation. It is in the context of on the job socialisation that research affirms recurring features of police culture that appear to exist irrespective of time and place and which act to influence the ways in which police interact with the public as well as undermining reform endeavours. Rarely has this been discussed in the context of non-criminal death investigations, nevertheless there are a number of recurring themes that have some relevance for our discussion. According to Loftus (2010, 1-2) these include: a craving for work that is crime oriented and promises excitement; an overwhelming persona of cynicism, pessimism and social isolation; and, an inherent conservatism, suspicion and intolerance toward those who challenge the status quo.

Each of these elements of police culture work to frame discussion of the interview data in the following ways. First, the infrequent and random dealings individual police have with non-criminal death investigations is framed through their preference for work that is crime oriented and promises excitement. Second, the contact police must have with

families suffering the trauma and grief of a sudden death is framed through their social isolation, cynicism and pessimism. Third, the over and under policing of vulnerable populations is framed through an inherent conservatism, suspicion and intolerance toward those who challenge the status quo. Taking each of these in turn:

a) The criminal lens

Since police officers tend to 'construct their social worlds as primarily concerned with crime fighting action' (Innes 2002, 67) it may appear at first glance that the notification of a dead body has the potential to fulfil the desire for work that is crime oriented and promises excitement. As Innes (2002, 70) has identified there is a 'predilection' in police culture to focus upon a small number of serious crimes, like murder, and then to proceed as if such activity is the principal way in which police spend their time. Such a 'mythology of policing' is both internally and externally projected, and supported by both fictional and factual media forms. However, the vast majority of sudden reportable deaths are neither criminal nor suspicious and this tends to mean that death investigations are low on the crime hierarchy and are thus afforded an inferior status by police. Couple this with the large amount of paper work associated with any death, whether it be the death at home of an elderly person from natural causes, or a suicide by hanging in open bushland, and this is enough to make sure that the task of a death investigation is allocated to the most junior and inexperienced of the police officers on duty (Henry 2004). As two of the police officers interviewed noted, a death investigation is time-consuming and inconvenient.

Going to a death isn't a quick job. You don't go in and go 'Yep dead', fill out the forms, get the undertaker, and see you later sunshine (police officer 2)

Well the police have got limited time to get the Form 1 [coronial death investigation form] done and they're required to complete it by the end of their shift. So they're trying to get all of this information, and put all this together, especially family advice. So if it's 3 o'clock in the morning they're going to have difficulty speaking to family. A lot of the police, the younger police, seem to baulk at asking those type of questions (police officer 1)

The recognition that a death investigation requires lengthy attention to detail, often at the end of a shift, is further exacerbated by its allocation to junior officers who are less likely to have developed the self-confidence, pragmatism and 'hardening' required to manage the tragedy of a death scene (Pogrebin and Poole 1991, 402). This in turn has implications for the ways in which information is gathered at the scene and the family communicated with, and was a concern identified by other professional groups in a death investigation. For example, two experienced Coroners discussed their own familiarity with poor death investigations by police and attributed it to junior officers with little experience or training.

Given the number of sloppily completed or inadequately completed Form 1's [coronial death investigation form] that I got from police ... I get the feeling it was allocated to quite junior officers with little or no training. So I would say no; I would say that I wouldn't be confident that it was really very carefully investigated (Coroner 4)

One stumbling block is that we rely for the initial process on the information provided by the police. They don't record it properly, and they're junior constables that attend a death scene and they are given this terrible task of dealing with bereaved, recently

bereaved and grieving people and asking the questions and then documenting it (Coroner 3).

This raises doubts about the quality of the material being communicated to Coroners, who rely on accurate information being gathered from the scene by police. As the legal officer tasked with overseeing an accurate cause of death certificate, the Coroner needs to rule out any suspicious circumstances, including third party involvement, make decisions about cause and circumstance of death, and determine the level of invasiveness of the non-consensual medico-legal autopsy. Poorly completed paperwork undermines confidence in the capacity of police to conduct non-criminal investigations such as these, and leads to questions about training and resources. In interview, specialised coronial counsellors, who are attached to each coronial state office in Australia and are experts in communicating with grieving families, raised concerns over the capacity of all police, not just junior officers, to gain accurate information from families, but also recognised that police were the only professional group who could logistically attend every death scene.

My neighbour suicided and I was assisting the wife in this whole process and I saw how the police asked those questions, which I was absolutely appalled in terms of how the police is assisting. So more training in that area would be great. Ideally, in a dream world, it would be great to have a counsellor to go into all suicides, but it's never going to happen (Coronial counsellor 1).

I have incredible concerns about the way that information is reported [by the police] to the counsellors and to the coroner. And it's not any particular region, it's not any particular rank, it's just sometimes information is inaccurate, sometimes police say that

they've asked the questions and they haven't ... And so we have significant and ongoing concerns with the way it's reported (Coronial Counsellor 2).

These criticisms from counsellors focus on the incapacity of police to engage sensitively with grieving families. However, it has also been identified that such bureaucratic procedures contribute to the process of 'routinizing death', which 'dilutes a death's social consequences by providing the police officer with an element of control' (Henry 2004, 27). Focusing on tasks and procedures limits the officer's interactions with bereaved family, and offers protection from anxiety and embarrassment. Those officers most likely to 'hide behind' paper work and police procedures are junior officers. It has also been identified by Henry (2004, 110) that police academy training prepares officers much better for the administrative aspects of police work, and less well for the complex interpersonal issues that various situations, like death scenes, present. Clarke and McCreanor (2006, 39) identify similar criticisms in their research on families' interactions with police during the death investigation process in New Zealand. Here, it was argued that the actions of police in following process 'to the letter' contributed to the family's sense of guilt at the death and complicated their grieving processes. In a similar fashion, Rock (1998) noted the intensity of a family's feelings and their sense of alienation from the process, especially when professionals such as police offered a dispassionate objectifying discourse.

As Howard, Tuffin and Stephens (2000, 297) identify because 'police officers are routinely exposed to dangerous, unpleasant and horrific situations', they tend to retain a social distance from emotionally charged situations, through a 'detached and dispassionate demeanour' (Pogrebin and Poole 1991, 396). This is perceived as maintaining a professional persona as a competent police officer (Frewin, Stephens and Tuffin 2006, 252). Such role distance may be an effective strategy in a criminal

investigation where it can be difficult to distinguish a victim from an offender (Innes 2002, 74; Sewell 1994, 567), but it's suitability in a death investigation needs further exploration given the complexity of the relationship between police and victims in the coronial system.

b) Emotion Work

The ways in which police engage with families during a death investigation has the potential to either minimise or exacerbate the pain and suffering of a sudden death. The police tendency for professional detachment as an 'impartial finder of facts' constrains their capacity for tact and compassion toward the grieving family (Henry 2004, 29). In the context of a death investigation, this tends to mean that families are asked to make important decisions by police when still in the grip of the shock and disbelief of the death notification. It is well recognised that this impacts on the decision making capacity of families, given their severely compromised ability to process and retain complex information at that time (Drayton 2011:238). This was well recognised by police during interview.

Most people are in shock. They won't even remember the conversations they've had with you (Police Officer 4).

Well the police have a very important role because they're talking to families immediately after the death of the deceased person and when the families are at their most vulnerable (Police officer 5).

In such confronting situations, emotional control by police is prioritised. Certain emotions come to be viewed as an occupational weakness and police officers are taught to repress feelings of fear and anxiety in order to maintain a professional image (Pogrebin and Poole 1991; Howard, Tuffin and Stephens 2000, 304). According to Hochschild (1979, 561) this is an example of 'emotion work' where police learn to identify and then to manage inappropriate emotional reactions to tragic and confronting deaths, where families may be grief stricken and bodies may be disrupted. This serves to create the social distance identified by police as necessary for a successful death investigation (Mitchell 1996, 141).

In addition, the entire process of a death investigation can be quite protracted, and the traumatic impact of the death can be exacerbated or mediated for the junior officer by the presence or absence of the deceased's family, the quality of personal interaction with other more senior police, the circumstances of the death and the state of the corpse (Henry 2004, 40). There is also an acknowledgement by police, missing from the interviews with all of the other coronial professional staff, that death scenes are overwhelmingly chaotic, messy and dirty. Smells and images of the dead remain with police long after the investigation (Henry 2004). In such situations, the anxiety and fear of exposure to a dead body may be exacerbated by feelings of horror, disgust, and shock. Add to this the junior and inexperienced rank of the officers, the infrequent and random nature of death investigations, and grieving and traumatised families and you have a situation very different to that of the daily work of a police officer.

And dealing with people who are suddenly thrust into a grieving process is totally different from dealing with somebody who's had their house broken into or somebody who is drunk and belligerent (police officer 2).

Cause they, let's face it, sometimes they take the easy way out and don't ask the hard question ... So yeah it's just a contentious issue it's a thing that police don't like to do ... we're not counsellors (police officer 1).

Emotional engagement with families is bemoaned by police as an unrealistic expectation. This is not because police fail to feel compassion, but as junior officers they often 'lack the experience to enact their feelings through appropriate words and behaviours that will bring solace and comfort *and* be acceptable police behaviour' (Henry 2004, 143). A request for a differentiation between police officers and counsellors is thus telling and speaks to the perception that sympathetic or nurturing behaviour falls outside the realm of real police work. Frewin, Stephens and Tuffin (2006, 250-251) suggest that this is because police cast emotion as undermining control, rationality and performance, based in the belief that such feelings produce a sense of vulnerability and endanger self and others. When exposed to potentially emotional situations such as a death scene, police can become conscious of what Hochschild (1979, 562) calls 'pinch' or discrepancy between what they actually feel and what they should feel. In response, police try to eliminate the pinch by working on these inappropriate feelings. One of the most recognised ways in which police do this is through the use of black humour (Young 1995; Mitchell 1996; Loftus 2010). In our interviews with police, this strategy became evident in a familiar and light-hearted nonchalance with death and the dead body.

You'd be what's called a shit magnet on the road. If you weren't a shit magnet you could be three years and get one dead body in three years. Yet the person you're working with on the day that might be their 10th body in 12 months, do you know what I mean? Some people just – I mean we call it bad luck because it's a lot of paperwork and not many police like doing dead bodies (police officer 4).

Irrespective of the reason for the humour and cynicism, it is manifest in a social distance from families and is a source of criticism by coronial colleagues. Given that families who are most likely to present a challenge to police - due to their religious and cultural practices around death, dying and disposal, their political manifestations of difference, or their familiarity with the criminal justice system - may also be over-represented in the coronial system, it behoves an exploration of whether this emotion work continues to operate within a police culture which prioritises the criminal lens.

c) Vulnerable and marginalised families

The role of police investigating a sudden death is made more complicated by the legislative requirement, variously enacted in all Australian states, that a family's religious and cultural status and concerns about the non-consensual medico-legal autopsy be communicated to the police at the time of the death notification. Those most consistently identified as falling within this legislative requirement in Australia, are Indigenous people, and those of Jewish and Muslim faithsⁱ. This requires such bereaved families to not only identify themselves to police but to understand and negotiate, in the traumatised state of a sudden bereavement, the medical and legal implications of a challenge to the internal autopsy of a loved one (Drayton 2011).

For Indigenous people, who are over-represented in coronial death investigations due in large part to such structural factors as endemic violence, poor access to health care, low life expectancies and high rates of chronic disease (Tatz 2005), this presents a distinct problem. As previously noted, it is police who are legislatively required to investigate all coronial deaths but this occurs within a long and well documented history of poor relations between police and Indigenous people, where ‘volatile conflict’ and accusations of ‘police abuse and harassment’, ‘excessive force’ and ‘institutional racism’ are common features (Cuneen 2006). The effect of this poor relationship is exemplified in previous research which found that Indigenous people were unlikely to raise a concern against the autopsy despite a legislative capacity to do so (Carpenter and Tait 2009). We surmised that one of the reasons for this may be found in the police role in the practical enforcement of colonisation, and that as a consequence, Indigenous people simply did not wish to have their cultural identity known to police. Another reason contemplated was that their well-documented over-representation in the criminal justice system may mean that their Indigenous cultural identity is already known to the police through previous adverse dealings. In such a context, Indigenous people can feel powerless to have their objections heard. The recognition that police were not the best people to investigate deaths in Indigenous families was well understood by the Coroners we interviewed:

But interestingly we rarely have many issues concerning autopsies within the Aboriginal community and we should do, there should be more and I don't know why. Now it could be that it's more of an urban population, and therefore it's not a particular issue for them, or it could be that no-one's actually asking the questions (Coroner 1).

I would expect that more often than not Indigenous communities didn't understand what their options were, and more often than not—you know—subjugated springs to mind. They just went along with what the police and authority figures have always told them (Coroner 8).

Ironically, the silence and invisibility of the Indigenous community within a coronial death investigation is evident even when an Indigenous status is identified and a cultural objection to autopsy articulated by Indigenous families. Previous research has demonstrated that Indigenous cultural objections did not affect coronial decision making on the invasiveness of the autopsy while religious objections did result in a decrease in the invasiveness of the autopsy ordered by Coroners (Carpenter et al. 2011). Such outcomes occur against a backdrop of 'the endemic losses of colonialism and the heightened mortality of ongoing alienation', and which in other contexts, such as Maori in New Zealand, have been argued to increase, rather than decrease, the relevance of cultural practices in relation to loss and death (Clarke and McCreanor 2006, 27). This is well understood by police liaison officers, but not so much by police themselves, who when they spoke of them at all, demonstrated negative characterisations of Indigenous people.

Very hard, it is really hard to explain to the family what will happen to the body. As you would probably understand and are aware, the body of the loved one that has passed away, especially the elders, is handled with the most reverence. If there is an idea that the family think this is going to autopsy, it's really very hard for them to release the body (police liaison officer 1)

They're very family oriented and it's difficult because a lot of them are alcohol dependent and we can have really bad situations ... So we have family members turn up and it's hard to get someone that's actually – and I'm being honest with you – sober enough to deal with, whether it's the long lost uncle or cousin that's related somehow or the family elder (police officer 4).

Such declarations are in themselves telling of a lack of understanding, awareness or interest in the more complex family structures found in Indigenous families, as well as adherence to a negative stereotypical portrayal of drunkenness and incapacity. The poor record of police response unearthed in his own research on Indigenous suicide led Tatz (2005) to conclude that without training in Indigenous communication, a familiarity with explanations for Indigenous suicide and an understanding of the social, historical and political factors surrounding the low life expectancy of Indigenous people, police were ill-equipped to deal with Indigenous deaths. He suggested the American model of utilising forensic anthropologists in death investigations as a useful addition to the coronial system in Australia. For similar reasons, an increase in the status and numbers of Aboriginal community liaison officers who operate in many rural communities was also suggested by Tatz (2005) as an important addition to Indigenous death investigations.

Police demonstrated similar intolerance to Muslim families when they identified themselves and sought to communicate concern about the autopsy of their loved one. However, the issues for Islamic families are quite different to those experienced by Indigenous communities. For one thing, Muslims are not over-represented in coronial death investigations, and when their religious objections are heard, research suggests they

are supported by Coroners who order less invasive autopsies as a consequence (Carpenter et al 2011). However, like Indigenous families, Muslims must first negotiate the validity of their objection to police.

*And I have found that the Muslims have a tendency to object big time. And it seems that the Muslims, it's not that I hate Muslims *laughs* it's just that they are prominent on the objection side. 'Oh you don't need to do this because you're cutting up the body'... I immediately get suspicious when somebody says, 'Oh no you shouldn't you shouldn't'. What have you had to do with this death in that case? I think we need to look at this a little bit further if you're objecting so strongly and putting it under the guide of religious or cultural concerns (police officer 2).*

It is convenient to point to the rising Islamophobia in western nations post 9/11 (Spalek 2008; Poynting and Mason 2006), as the central reason for this racist and ignorant pronouncement by a police officer. Police culture is inherently conservative and it is perhaps not surprising that this sector of the population has embraced the recent moral panic around terrorism, where any expression of Islamic religious identity is suspicious, indicative of an underlying and dangerous fundamentalism (Humphrey 2007, 13). In a similar fashion, the rule orientation of police culture is easily aligned with the creation of 'suspect communities' who need to be monitored by state agencies such as police (Spalek 2008, 211). Such an understanding is widespread in Australian society, and not just in the police service, with the 'Arab other' constructed through a complex process of 'recurrent negative media portrayals, prejudiced political pronouncements and racist populist rhetoric' (White, 2009, 366). That said, Muslim immigrants have been seen as a problem community by police ever since Lebanese Muslims started arriving in Australia

in significant numbers from the 1970s (Humphrey 2007, 12; Poynting and Mason 2007), so it is not so simple to position this as a recent outcome of global political factors. Rather, as Loftus (2010) maintains, police culture is remarkably resistant to change, and despite the rise of new styles of policing which asks officers to adopt a more service oriented role, accompanied by the increasing multicultural nature of many police organisations and the growing diversity of client communities, police cultures remain crime oriented, intolerant and conservative.

4. Conclusion

Death investigations are almost always challenging, emotional and disruptive to the professional persona of police. They can be an affront to all of the senses and it is well documented that an officer's first death scene is well remembered many years after the event. Death investigations rarely include a suspect or an offender and so require a different model of communication in a context where police may emotionally identify with the grieving family. Coronial professionals tend to agree that police are not the most appropriate to attend to a death scene and gather the information that is required by the Coroner in their decision making. Nevertheless, in Australia at least, they are the only profession who is logistically available across the state 24 hours a day. As a consequence, death investigations will remain police work. The challenge is to make sure that police have the capacities to perform this non-criminal investigation in a manner that protects police and does not re-traumatise the families. This is especially important for vulnerable and marginalised families who have a culturally different relation to the dead.

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